

California Regional Water Quality Control Board
Santa Ana Region

January 22, 2004

ITEM: 19

SUBJECT: Status of Efforts to Require Suspected Dischargers to Investigate
Perchlorate Pollution in the Rialto, Colton and Chino Groundwater
Subbasins

DISCUSSION:

At the November 21, 2003 Board meeting, staff reported that, pursuant to Section 13267 of the California Water Code, the Executive Officer had issued a total of twenty Investigation Orders to suspected dischargers and property owners regarding the perchlorate pollution in the Rialto, Colton and Chino Groundwater Subbasins.

Identified below is the status of the investigations for those suspected dischargers that have conducted activities or communicated with staff since the last Board meeting:

Pyro Spectaculars, Inc.

Pursuant to a 13267 Investigation Order, Pyro Spectaculars, Inc. was required to submit a work plan and conduct a soil and groundwater investigation at its Pyro Spectaculars and Astro Pyrotechnics facilities, and its former burn pit/disposal site. Pyro Spectaculars, Inc. failed to conduct the required investigation in accordance with the approved time schedule; therefore, the Executive Officer issued an administrative civil liability (ACL) complaint against Pyro Spectaculars, Inc. on October 28, 2003 for failing to comply with the Investigation Order. The Executive Officer and Board staff met with representatives of Pyro Spectaculars, Inc. on November 14, 2003. On November 20, 2003, the Executive Officer, Astro Pyrotechnics and Pyro Spectaculars, Inc. entered into a Settlement and Release Agreement (Agreement). Under the terms of the agreement, Pyro Spectaculars, Inc. agreed to pay the sum of \$10,000 (this payment was received on December 24, 2003).

Pyro Spectaculars commenced its field activities on November 5, 2003. Initial results of soil sampling at the Pyro Spectaculars facility did not indicate the presence of perchlorate or other contaminants in the soil. However, high concentrations of perchlorate (up to 32 parts per million) were detected in the soil at the Astro Pyrotechnics facility. As of January 5, 2004, further investigation activities were still in progress at the former burn pit/disposal site that was formerly used by Pyro

Spectaculars. In addition, further investigation will be required in areas where perchlorate has been detected at the Astro Pyrotechnics site.

Whittaker Corporation (former AMEX, Tasker site)

Whittaker submitted a report to Board staff on July 31, 2003, pursuant to a 13267 Order, including historical records of its industrial activities at 2298 West Stonehurst Avenue in Rialto (currently owned by Thomas O. Peters and leased and occupied by Astro Pyrotechnics). Based on the information that was provided in that report, the Executive Officer issued a 13267 Investigation Order to Whittaker on October 21, 2003, requiring submittal of a work plan by December 16, 2003 for a soil investigation at the former Whittaker facility. In a letter dated December 22, 2003, Whittaker requested an extension of the work plan submittal deadline. In a letter dated December 26, 2003, the Executive Officer denied Whittaker's request for an extension; however, the Executive Officer stated that Whittaker's written commitment to meet with Board staff and submit the required work plan by the end of January would be taken into consideration in evaluating the need for assessing civil liability against Whittaker.

Board staff will continue its efforts to ensure that the investigation of the former Whittaker site is carried out in coordination with the on-site investigation activities that are being conducted at the Astro Pyrotechnics site by Pyro Spectaculars, Inc. and Mr. Thomas O. Peters.

Mr. Thomas O. Peters, Property Owner

In November 2003, Board staff met with the environmental consultant for Mr. Thomas O. Peters regarding the required work plan for investigation of the property located at 2298 Stonehurst Avenue, Rialto (currently leased and occupied by Astro Pyrotechnics). The consultant submitted a work plan on December 18, 2003. Staff is reviewing the work plan, and will continue its efforts to ensure that the investigation of Mr. Peters' property is carried out in coordination with the on-site investigation activities that are being conducted at the Astro Pyrotechnics site by Pyro Spectaculars, Inc. and the Whittaker Corporation.

American Promotional Events, Inc. - West (APE – West)

The Executive Officer conditionally approved the work plan for additional soil investigation at the APE – West site. The field work began in December 2003. Staff will provide information regarding this investigation to the Board on January 22, 2004.

Mr. Wong Chung Ming, Property Owner

On October 23, 2003, Mr. Wong submitted a draft work plan for investigation of the 62-acre property that is currently leased and occupied by APE – West and Pyro Spectaculars, Inc. Mr. Wong's property is a portion of the former 160-acre Goodrich and West Coast Loading Corporation site. Board staff reviewed the work plan, and then

visited the 62-acre property with Mr. Wong's environmental consultant on November 13, 2003. The Executive Officer approved the work plan on December 15, 2003, with the condition that additional soil samples be collected and analyzed. Field work is expected to commence in January 2004.

County of San Bernardino

The County submitted its report of the soil and groundwater investigation of the former bunker complex in Rialto. Staff reviewed the report, and on November 18, 2003, staff met with technical consultants for members of the Inland Empire Perchlorate Regulatory Task Force to discuss the findings presented in the County's report. The Task Force members subsequently submitted written comments on the County's report to Board staff. Board staff will be providing written comments to the County by mid-January.

Zambelli Fireworks

Pursuant to a 13267 Investigation Order, Zambelli was required to submit a work plan and conduct a soil and groundwater investigation at the site of its former storage bunker in Rialto. The Executive Officer issued an administrative civil liability complaint against Zambelli on July 28, 2003 for failing to comply with the Investigation Order. Zambelli waived its right to a hearing before the Board, and agreed to pay \$20,000 (in four separate installments) to settle its financial obligations under the Complaint, and to submit a work plan by October 6, 2003. Zambelli has paid all four installments of \$5,000 each, as scheduled, and submitted the work plan on time. The Executive Officer has conditionally approved the work plan. Board staff anticipates that field work at the former Zambelli bunker site will commence in January 2004.

Emhart Industries, Inc./Black & Decker (former West Coast Loading Corporation)

Pursuant to a 13267 Investigation Order, a work plan for a perchlorate investigation at the former West Coast Loading Corporation (WCLC) facility was due from Emhart Industries, Inc. on November 22, 2002. Emhart/Black & Decker submitted a Petition for Stay and for State Board Review of the 13267 Order. The State Board dismissed the Stay request on December 18, 2002. The State Board dismissed the Petition for Review on July 7, 2003.

On August 6, 2003, Emhart filed a Petition for Writ of Mandate in the State Superior Court, Riverside County, seeking an order to invalidate the Executive Officer's 13267 Investigation Order. On August 21, 2003, the Executive Officer issued an administrative civil liability complaint against Emhart for failing to comply with the Investigation Order. Emhart later filed a Motion for Stay of Regional Board Order and Abatement of Administrative Civil Liability Proceedings, seeking an order to halt the administrative civil liability proceedings.

At a hearing on October 17, 2003, the Court agreed only to stay the accrual of penalties as of August 6, 2003, the date that Emhart filed its Petition for Writ of Mandate. The

Regional Board is bound by the Court's Stay decision. The Board was scheduled to conduct a hearing on the ACL complaint on November 14, 2003; however, Emhart requested a postponement of the hearing. The hearing was postponed, and a scheduling conference regarding this matter was held on November 14, 2003. The Board Chair agreed to postpone the hearing until the Court has made a ruling regarding the Emhart petition.

In addition, the Kwikset Corporation filed a Petition for Writ of Mandate related to the Board's rescission of the cleanup and abatement order. The hearing regarding the Kwikset petition is scheduled for January 23, 2004. On December 5, 2003, the State Attorney General's Office filed a Motion to Augment the Administrative Record for the Kwikset matter, in order to provide the Court with the most accurate and recent significant findings regarding Kwikset's affiliation with WCLC, WCLC's historical use of perchlorate, and onsite disposal of perchlorate at its former Rialto facility. Judge Tranbarger, Riverside Superior Court, is scheduled to consider the Motion to Augment the Kwikset record on January 16, 2004.

At the January 22, 2004 Board meeting, staff will provide information on any further developments, and will continue to update the Board at future meetings on the progress of the perchlorate investigation efforts.